Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
TCI of Pennsylvania, Inc.	)	
	)	File No. CSB-A-0322
Appeal of Local Rate Order of the City of Pittsburgh, Pennsylvania	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: January 8, 2004 **Released: January 9, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. TCI of Pennsylvania, Inc. ("TCI"), the franchised cable operator serving the City of Pittsburgh, Pennsylvania has appealed a local rate order adopted by the City of Pittsburgh ("City") on May 30, 1996 ("order"),[1] which rejected proposed basic service tier ("BST") rates as unreasonable. The City rejected the BST rates because TCI failed to provide proper or complete documentation for reported programming cost increases. The City also rejected TCI's adjustment for inflation after concluding that it had been recovered in prior filings. Finally, the City rejected TCI's equipment rates because of the way TCI calculated the depreciation period for converter boxes. The City filed an opposition to the appeal to which TCI replied. TCI also filed a request for a partial stay of the City's rate order on the Form 1205, which the City opposed. TCI's stay request is rendered moot by this order and is dismissed. Based upon our review of the record, we grant in part and deny in part TCI's appeal.

II. BACKGROUND

2. The Communications Act provides that, where effective competition is absent, cable rates for the BST are subject to regulation by franchising authorities.[2] Rates for the BST should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.[3]

3. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.[4] In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that

[1] Letter dated May 30, 1996 from Deborah S. Miskovich, Superintendent, Bureau of Cable Communications, City of Pittsburgh, to Shawn M. McGorry, General Manager, TCI of Pennsylvania, Inc.

[2] 47 U.S.C. § 543(a)(2).

[3] 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

[4] 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

decision exists.[5] The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

4. An operator that wants to increase its BST rate has the burden of demonstrating that the increase is in conformance with the Commission's rules.[6] In determining whether the operator's rates conform with our rules, a franchising authority may direct the operator to provide supporting information.[7] After reviewing an operator's rate forms and any other additional information submitted, the franchising authority may approve the operator's rate increases or issue a written decision explaining why the operator's rates are not reasonable.[8] If the franchising authority determines that the operator's proposed rates exceed the Maximum Permitted Rate ("MPR") as determined by the Commission's rules, it may prescribe a rate different from the proposed rate and order refunds, provided that it explains why the operator's rate or rates are unreasonable and the prescribed rate is reasonable.[9]

5. On March 1, 1996, TCI filed FCC Forms 1205, 1210,[10] and 1240 with the City. On April 29, 1996, the City sent TCI an extensive Letter of Inquiry ("LOI") requesting clarification and additional information regarding the filed forms. On April 22, 1996, TCI submitted an amended Form 1240. TCI delivered a written reply to the LOI on May 2, 1996.[11] On May 30, 1996, the City issued its order denying the proposed rate increases. The City rejected the Forms 1205, 1210, and 1240 because the information submitted by TCI was incomplete and failed to support its claimed costs. TCI is challenging the City's rejection of the proposed Form 1205, 1210, and 1240 rate increases.

III. POSITIONS OF THE PARTIES

6. In its Form 1240 filing, TCI sought a rate increase based on increased costs for five programming services: Faith and Values ("F&V"), Pittsburgh Cable News Channel ("PCNC"), Mind Extension University ("MEU"), Sneak, and Prevue Guide ("Prevue"). The City rejected all of the claimed cost increases. Some costs were rejected because the City concluded that TCI had redacted too much information, and relevant information may have been concealed that the City needed to determine whether the increases were artificially inflated. Costs were also rejected because of incomplete information as well as the listing of Satellite Services, Inc. ("SSI") and "The Systems" as the contracting parties in affiliation contracts rather than TCI. The order questioned whether the PCNC programming costs were properly applicable to city subscribers.

7. TCI challenges the City's rejection of its Form 1240 programming costs for all five

[5] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 (1993) ("*Rate Order*"); *Third Reconsideration Order*, 9 FCC Rcd 4316, 4346 (1994).

[6] 47 C.F.R. § 76.937(a).

[7] *Rate Order* at 5718.

[8] 47 C.F.R. § 76.936; *see Ultracom of Marple Inc.*, 10 FCC Rcd 6640, 6641-42 (1995).

[9] *See Century Cable of Southern California*, 11 FCC Rcd 501 (1995); *TCI of Iowa, Inc.*, 13 FCC Rcd 12020 (1998).

[10] The Form 1210 was filed with the Form 1240 because TCI was switching from the quarterly to the annual rate methodology.

[11] Attachment B of TCI's appeal is an unsigned cover letter dated April 23, 1996 transmitting its LOI response. The City, in its opposition, indicates that the cover letter it received from TCI (City Exhibit 1) transmitting the response is worded differently, signed, and dated April 29, 1996.

programming services. Two programs F&V and PCNC -- are purchased from affiliated programmers. TCI alleges that it provided all BST programming service information, including adequate documentation of the relevant portions of the F&V and PCNC contracts that set forth the programming rates. TCI further asserts that the programming rates are final rates and it does not receive any offsetting rebates from either F&V or PCNC. TCI also alleges that it provided the proper documentation for F&V and MEU even though the contracts identified SSI rather than TCI as the contracting purchaser. TCI states that SSI is a wholly-owned subsidiary of TCI, which contracts with and pays national programming vendors for all TCI systems. TCI contends that it is immaterial that the contracting party is listed as SSI rather than TCI. TCI further contends that if the City had asked, TCI would have explained the relationship. Finally, TCI also disputes the City's claim that its supporting documentation -- monthly invoices -- for Sneak and Prevue was insufficient, because there were no contract agreements. TCI states that there is no contract agreement with Sneak and Prevue. TCI is billed monthly and pays a flat monthly fee as reflected in the invoices submitted to the City. TCI asserts that the invoices were the only documentation for Sneak and Prevue payment amounts. Thus, TCI argues that the City is attempting to penalize it for failing to provide documentation that does not exist.

8. In opposition, the City asserts that TCI did not establish the showing required by section 76.922(f)(6) of the Commission's rules for external costs, which provides that adjustments to permitted charges for the cost of programming purchased from affiliated programmers is permitted as long as the price charged to the affiliated system reflects either: 1) the prevailing company prices offered in the marketplace to third parties; or 2) the fair market value of the programming.[12] The City alleges that TCI failed to satisfy its burden by not furnishing information specifying how much F&V and PCNC charge non-TCI affiliated operators, and whether the price charged to TCI for each channel is the prevailing price of the program supplier or the fair market value. Notwithstanding the fact that the requested price increases are small, the City argues that it was unable to determine whether the rates on which the programming increases are based have been artificially inflated.

9. The City argues that TCI had two opportunities, the initial filing and the LOI response, to submit proper information, but failed to satisfy its burden of proof by failing to provide the correct information initially, and then subsequently failing to fully respond to the LOI. The City asserts that although TCI submitted supporting documentation, portions of the documents were so substantially redacted that the City concluded that relevant information to the analysis may have been concealed.[13] For instance, the City alleges that the redacted information prevented it from determining whether TCI received any quality discounts or rebates and the terms of payments. The City also alleges that TCI's information was incomplete as evidenced by TCI providing a contract agreement with F&V that reflected SSI as the contracting party rather than TCI. The City argues that TCI is required by section 76.939 of the Commission's rules to comply with a local franchising authority's information request and is prohibited from submitting information that omits relevant material information.[14] The City further argues that under Section 76.938 of the Commission's rules, an operator is required to produce even proprietary information.[15] The City cites *Tele-Media Company of Virginia,*[16] which denied a cable

[12] 47 C.F.R. § 76.922(f)(6).

[13] The PCNC contract makes reference to "The Systems," but the contract has been almost wholly blacked out, including blacking out any reference to who or what are "The Systems."[13] The City indicated that this was particularly important because in other parts of the LOI response, it appears that, for accounting purposes, TCI aggregates different municipal franchisees together. Thus, the City concluded that "there are no assurances that the programming costs cited by TCI are those applicable to the monthly fees of subscribers who are City residents."

[14] 47 C.F.R. § 76.939.

[15] 47 C.F.R. § 76.938.

[16] 10 FCC Rcd 3862 (1995).

operator's appeal requesting that information submitted in a rate form be kept confidential.

10. Finally, the City argues that after it denied TCI's requested rate increase, TCI has chosen to provide new information for the first time on appeal. The City argues that it relied upon the best information available to it at the time the order was issued. The City therefore objects to TCI's attempt to submit information on appeal that the City requested and that was readily available to TCI before the City rendered its order. The City asserts that TCI did not meet its burden under Section 76.922(f)(6) of the Commission's Rules, and the City properly denied the rate increases attributable to F&V and PCNC.

11. In reply, TCI argues that the City doesn't offer any basis for suspecting that TCI's modest increases were exaggerated. TCI alleges the City ignored valid programming costs for F&V and PCNC because the underlying contract showed SSI as the contracting party. TCI argues that the City should accept its explanation of the TCI/SSI relationship as detailed in the appeal petition. However, rather than accept TCI's explanation contained in TCI's appeal petition, the City has ignored the explanation. TCI asserts that if the City had questions about the relationship, it could have asked about the relationship in the LOI, but it did not do so. TCI asserts that no other local franchising authority has ever questioned the contracts and the relationship to SSI.

12 TCI also asserts that the City wrongly rejected the costs associated with Sneak and Prevue based on inadequate documentation. TCI states that the City ignored the fact that TCI had no existing contract with Sneak or Prevue. TCI argues that it provided the best available documentation to support current costs and conservatively projected constant, rather than increasing costs for these two programs. TCI admits that it did redact irrelevant portions of its programming contracts involving license fees used in the Form 1240 filing, but those fees are included in the Exhibits to TCI's LOI response.[17] TCI also states that it provided the City with names of individuals to contact at the affiliated companies who could provide all the requested details regarding operators that TCI was unable to provide and to allow the City to verify the information.

13. Finally, TCI argues that the City erred in denying it recovery of inflation adjustments of 2.15%, which was initially sought in its 1995 Form 1210 for the period September 30, 1993 to June 30, 1994, and again subsequently in its 1996 Form 1210, as well as a 2.96% inflation adjustment in its Form 1240 for the period July 1, 1994 to June 30, 1995. TCI asserts that the inflation factor was claimed for the first time in the March 1996 Form 1240. The City concluded that TCI had recovered the inflation adjustment in the Form 1210 and is attempting to take inflation twice.

IV. DISCUSSION

A. Affiliated Programming

14. TCI cited cost increases for F&V and PCNC, which are affiliated programs, to justify its rate increases in its Form 1240. Section 76.922(f)(6) of the Commission's rules provides that an operator may adjust its rates to reflect increases in the costs of such programming, provided that the programming rates charged to the operator by the affiliated programmer reflect either (1) the prevailing company prices offered by the programmer to unaffiliated entities or (2) the fair market value of the programming.[18] TCI's original filing failed to so indicate. Because TCI failed to submit the relevant information on F&V and PCNC, the City requested the information through an LOI. The LOI requested that TCI provide information concerning the programming prices charged by F&V and PCNC to TCI and to unaffiliated cable operators so that the City could determine whether TCI satisfied the requirements of section 76.922(f)(6). TCI responded by providing the amount of the increases for F&V and PCNC and an

[17] Reply at 3; TCI response to LOI, Response to Question #3.

[18] 47 C.F.R. § 76.922(f)(6).

affiliation agreement in support of its F&V costs and a letter agreement in support of its PCNC costs. The documents were heavily redacted. TCI did not indicate whether the price increases reflected the prevailing company price offered to unaffiliated programmers or the fair market price. TCI did indicate that "with respect to the information that you requested from other cable operators, TCI-P does not keep information regarding other cable operators, including the services that are carried on their respective systems."[19] The City reviewed the F&V affiliation agreement and PCNC letter agreement, but concluded that the non-redacted portions did not contain enough information to allow the City to determine either the prevailing prices offered to unaffiliated entities or the fair market value of the programming.[20]

15. TCI has the burden of "proving that its existing or proposed rates for basic service and associated equipment comply with the requisite laws and regulations.[21] Furthermore, TCI has an obligation to provide any information that is reasonably necessary to support its proposed rates. The City does not bear the burden of obtaining the necessary information from sources other than TCI. TCI failed to provide information necessary for the City to complete its evaluation of the programming costs TCI seeks to recover. TCI stated that it does not receive discounts or rebates from its affiliated programmers, but it did not indicate in either its LOI response or the appeal whether TCI payments for F&V and PCNC were comparable to those paid for unaffiliated programming nor did TCI otherwise demonstrate the fair market value of that programming.

16. The LOI referenced the Commission's rules regarding the reasonableness of cost increases for programming purchased from affiliated companies. The City specifically requested information that would allow it to evaluate whether the cost increases met the Commission's standards, and stated that this was the purpose of its inquiry.[22] TCI had ample notice and opportunity to supply the City with responsive information before the City's record-closing date. The City correctly argues that a cable operator is obligated to provide proprietary information if requested by a local franchising authority as long as the operator is provided a justification for the information requested.[23] We find that TCI failed to meet its burden of proof with respect to its claimed programming costs for F&V and PCNC. The City is entitled to rely on the best information available to it, and the information provided by TCI in its heavily redacted form was inadequate for purposes of the City's review.[24] We cannot conclude the City acted unreasonably. We deny TCI's appeal with respect to the affiliated programming cost justifications provided for F&V and PCNC.

B. Non-affiliated Programming

1. True Up Period

MEU

17. TCI claimed $55,775.59 in True-Up Period programming costs for MEU, Sneak, and Prevue. A "true-up" adjustment is an adjustment or correction of projected cost increases estimated in the prior year's Form 1240. The City rejected the MEU programming costs in the true-up adjustment because the contract that TCI provided identified SSI, not TCI, as the contracting party. TCI argues on appeal that SSI is a wholly owned subsidiary of TCI that "contracts with and pays national programming

[19] See LOI Response to Request and Exhibits 3-1 and 3-2.

[20] *Id*.

[21] 47 C.F.R. § 76.937.

[22] *See* LOI Response at 2-3 (Questions 3.A and 3.B).

[23] 47 C.F.R. § 76.938.

[24] 47 C.F.R. § 76.937(d).

vendors for all TCI systems."[25] TCI also argues that it should not be penalized for failing to explain this arrangement to the City when it provided the contract excerpt. No other local franchising authority had ever questioned SSI's relationship with TCI. While the City reasonably could have questioned TCI's relationship with SSI, it was unreasonable for the City to completely reject the costs simply because TCI failed to explain its relationship with SSI. There is a presumption that the information provided by a cable operator in written statements and in response to inquiries from local franchising authorities is truthful.[26] Furthermore, the MEU contract showing SSI as the contracting party serves as documentary evidence of TCI's programming costs for MEU. The MEU contract TCI provided indicates the level of the projected programming cost changes and their effective dates. It appears that TCI made a timely, good faith effort to comply with the City's request for a copy of the MEU programming contract. Because the MEU contract establishes the costs, we must reject the City's conclusion that since SSI was identified as the contracting party rather than TCI, no costs were incurred. TCI provided credible evidence that it did incur such programming costs. We find that the City's exclusion of these costs was unreasonable and grant the appeal with respect to MEU costs.

Sneak and Prevue

18. The City rejected TCI's costs for Sneak and Prevue because TCI failed to provide copies of its programming contracts. The LOI requested copies of programming contracts for all services for which TCI alleged it had incurred increased programming costs. TCI's LOI response did not explain that TCI had no written contracts with Sneak or Prevue. The response included summary sheets listing the "Contractual Basis" for its programming. The sheet listing Sneak and Prevue costs indicates that the contractual basis is "Flat Fee/Invoiced."[27] TCI explains in its appeal petition that there are no contract agreements for Sneak or Prevue and that, for each month of service, TCI pays a flat fee equal to the amount shown on the invoices it provided to the City. PCNC was listed under "Flat Fee/Invoiced" but had a contract.[28] In contrast, Sneak and Prevue were also listed under "Flat Fee/Invoiced" but did not have contracts.[29]

19. TCI should have informed the City in its response to the LOI that there were no contracts with Sneak or Prevue and that the invoices provided showed the monthly costs TCI incurred for each service during the entire true-up period. However, the invoices serve as documentary evidence of TCI's programming costs for Sneak and Prevue. Therefore, we reject the City's conclusion that because there are no contract agreements, no costs were incurred. TCI provided credible evidence that it did incur costs for Sneak and Prevue. We find that the City's exclusion of these costs was unreasonable and grant the appeal with respect to Sneak and Prevue costs.

2. Projected Period

MEU

20. TCI estimated $159,322.33 in programming costs for MEU, Sneak, and Prevue for the projected period. The Commission's rules provide that an operator may adjust its annual rates based on projected period costs to reflect inflation and changes in external costs and the number of regulated channels that are projected for the subsequent 12 months following the date of the operator's scheduled

[25] Appeal at 3-4.

[26] 47 C.F.R. § 76.939.

[27] Appeal Exhibit 4-4.

[28] LOI Response Exhibit 4-2.

[29] *Id.*

rate adjustment.[30] The Commission's rules provide that "in order that rates be adjusted for projections in external costs, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable."[31] Although programming costs are presumed to be reasonably certain and reasonably quantifiable, that presumption is only applicable "to the extent that programmers and operators have agreed in advance to the amount of programming cost changes and the date the cost changes will take effect."[32] Projected programming costs that represent a change from incurred costs are presumed to meet this standard to the extent the operator demonstrates that it has agreed with the programmer on the amount of the cost change and the date it will become effective.[33] We have said "this presumption does not eliminate an operator's duty to respond to reasonable requests for information in support of rate filings."[34]

21. Although the MEU contract excerpt TCI provided shows SSI as the contracting party and TCI did not explain its connection to SSI on the record below, as stated above with respect to the true-up period, we believe TCI acted in good faith when it provided the SSI contract in response to the LOI. We find, therefore, that the City acted unreasonably in rejecting TCI's projected costs for MEU and grant the appeal with respect to MEU projected costs.

Sneak and Prevue

22. The City rejected the projected costs for Sneak and Prevue because inadequate information was provided concerning projected costs. To establish projected costs, TCI provided invoices for a one month period in 1995. The City argues that TCI's submission of invoices rather than contracts fails to satisfy the evidentiary standard for such costs. As we discussed previously with regard to MEU's projected costs, rates may be adjusted for projections in external costs provided that, the operator can demonstrate that such projections are "reasonably certain and reasonably quantifiable."[35] In this case, the projected costs for Sneak and Prevue programming are equal to the incurred costs for that programming as set forth in the one-month invoices. These costs, therefore, appear to be reasonably certain and reasonably quantifiable, even though TCI's only evidentiary support for the costs are the one-month invoices applicable to the true-up period. TCI's projected costs for Sneak and Prevue therefore satisfy the applicable evidentiary standard. The City's rejection of these costs was unreasonable. We grant the appeal with respect to Sneak and Prevue projected costs.

3. TCI Gap Period

23. In its Form 1240 submission, TCI proposed to increase its BST rates to recover $79,721.51 for the TCI GAP period ("Gap"). When operators switched from the Form 1210 to the Form 1240, the operator may not have had actual cost data for costs incurred up to the time it made its first annual adjustment, which may have resulted in a delay for the operator in recovering those costs until it implemented higher rates after its second annual Form 1240 filing.[36] Operators were given a waiver that

[30] 47 C.F.R. § 76.922(e)(2).

[31] 47 C.F.R. § 76.922(e)(2)(ii)(A).

[32] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, *Thirteenth Order on Reconsideration,* 11 FCC Rcd 388, 418-19 (1995) ("Thirteenth Order on Reconsideration").

[33] *Id* at 418-419.

[34] *Id*. at 418, n 146.

[35] 47 C.F.R. § 76.922(e)(2)(ii)(A).

[36] *In the Matter of TCI of Richardson, Inc.*, 14 FCC Rcd 11,700, 11711 (1999).

allowed them to estimate costs for the period before as well as after their new annual rates were to become effective, and this is known as the Gap period.[37] However, it only applies to an operator's first Form 1240 filing.[38] TCI received approval to include these costs in its 1996 Form 1240, which was its first Form 1240 filing.[39] In rejecting the Gap period costs, the City relied on the deficiencies it identified with respect to the true-up period and projected costs for MEU, Sneak, and Prevue, i.e., TCI is not identified as the contracting party and no contracts were provided for Sneak and Prevue. The City excluded these costs entirely when it calculated TCI's prescribed rate. The City's approach is based on the assumption that TCI incurred no costs for these services. This assumption is not supported in the record, which indicates that TCI incurred certain costs for programming purchased during the Gap period.[40] For the reasons discussed in the true-up period section above,[41] the City's exclusion of these costs in its calculation of the prescribed rate was unreasonable and we therefore grant the appeal with respect to Gap period costs.

C. Inflation

24. When the Commission revised its rate regulations in 1994, "transition" cable systems whose rates fell below certain benchmarks were not required to adjust their rates by the full "competitive differential" but were prohibited from recovering inflation increases until their rates reflected the full competitive differential.[42] The Commission later reconsidered this restriction, allowing certain transition systems to recover inflation increases that had occurred since September 30, 1992, the date of the data used to determine the competitive differential and benchmarks.[43] It specified an inflation factor of 3% for the first year, through September 30, 1993, and an inflation factor of 2.15% through June 30, 1994, for a total maximum inflation factor of 5.21% through June 1994.[44] A March 8, 1995 public notice providing guidance about the application of inflation to certain transition systems erroneously stated that operators were eligible to receive an inflation adjustment up to the full 5.21%. Because benchmark rates calculated pursuant to the revised rate regulations already recovered the first year's 3% inflation factor, the Commission later corrected the public notice to limit the inflation adjustment for the period through June 30, 1994 to a maximum inflation factor of 2.15%. Cable operators whose rates were computed with the erroneous inflation factor were to remove the excess inflation from their rates in their next rate adjustment, but no later than March 31, 1996.[45] The adjustment was to be made using FCC Form 1210 or

[37] *Id.*

[38] *Id.*

[39] *See* Opposition Exhibit 1, Letter from Gary Laden, Chief, Policy and Rules Division, Cable Services Bureau, Federal Communications Commission, to Richard Treich, TCI Communications, Inc. (Feb. 27, 1996); *Annual Rate Adjustment System for Cable Service Rates, Request for Waiver of Requirements Contained in Thirteenth Order on Reconsideration*, 11 FCC Rcd 10235 (1996).

[40] The MEU contract, for example, identifies costs applicable to the TCI Gap Period. *See* LOI response Exhibit 4-3. The invoices for Sneak and Prevue, while not applicable to this time period, nevertheless indicate that TCI incurred costs for these services. TCI's summary sheets indicate that the costs were incurred during the TCI Gap Period. *See* LOI response Exhibit 4-4.

[41] Supra, ¶¶ 17-19.

[42] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119, 4176-79 ¶¶ 123-27, 4182 ¶ 131 (1994).

[43] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Ninth Order on Reconsideration, 10 FCC Rcd 5198, 5202 ¶ 9, 5203 ¶¶ 12-13 (1995).

[44] *Id*. at 5203 ¶ 12.

[45] March 1, 1996 was also the deadline for recovering the inflation through the June 1994 period. *Letter to Mr. Peter Feinberg*, 10 FCC Rcd 10506 (1995).

the then new FCC Form 1240. The Commission explained this adjustment in public notices dated July 25, 1995 and November 9, 1995.[46] During this period, the Commission announced the inflation factor for the next period (from July 1, 1994 through June 30, 1995) was to be 2.96%.[47] Cable operators switching from the quarterly to the annual rate adjustment methodology could build previously announced but unclaimed inflation adjustments into their true-up and projected period rates computed on their first FCC Form 1240.[48]

25. TCI's system qualified as a transition system.[49] In 1996, TCI filed its last Form 1210 and its first Form 1240 because TCI was switching from the quarterly to the annual rate adjustment methodology. TCI's 1996 Form 1210 sought an inflation adjustment of 2.15% for the period October 1, 1994 to March 31, 1995. TCI had previously sought to recover this inflation adjustment in its 1995 Form 1210, but it was rejected. The City rejected the 2.15% inflation adjustment sought in the 1996 Form 1210 because TCI attempted to recover it previously in the 1995 Form 1210. The Form 1240 sought an inflation adjustment of 2.96% for the period July 1, 1994 to June 30, 1995. The City also rejected the 2.96% inflation adjustment because it concluded that TCI had already sought an inflation adjustment for the same period in the 1996 Form 1210. On appeal, TCI argues that the City wrongly rejected its claimed inflation adjustments for 2.15% and 2.96%.

A. Form 1210

26. TCI sought an inflation adjustment of 2.15% in its 1996 Form 1210.[50] TCI states that, previously, it had included a 2.15% inflation adjustment for the period covered in its 1995 Form 1210,[51] but it was never implemented because the City rejected the proposed rate increase.[52] TCI claims that its 1996 Form 1210 contains a starting rate of $9.43, which is the MPR approved by the City in its review of the 1995 Form 1210, but that rate does not include the 2.15% inflation adjustment.[53]

27. In opposition, the City argues that TCI's 1995 Form 1210 applied an inflation adjustment of 2.15% in calculating its MPR.[54] According to the City, TCI performed an inflation adjustment and

[46] Public Notice, Question and Answer on Cable Television Rate Regulation, 77 Rad. Reg. 2d (P&F) 772, 1995 WL 434058 (1995); Public Notice, Cable Rates Adjustment for Inflation Applied to Transition Rates, 11 FCC Rcd 1151 (1995).

[47] Public Notice, New Annual Inflation Adjustment Figure for Cable Operators Now Available, DA 95-2086 (Oct. 2, 1995); FCC, Media Bureau, Inflation Updates for Forms 1210 and 1240, http://www.fcc.gov/mb/csinflat.html (last visited Dec. 11, 2003).

[48] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Thirteenth Order on Reconsideration, 11 FCC Rcd 388, 415 ¶ 62 (1995); Instructions for FCC Form 1240 at 13, Line C1 (July 1996); MHCRC Reply, Ex. 3 at 2, Instructions for FCC Form 1240 at 12 (dated Dec. 15, 1995).

[49] The City does not dispute this status.

[50] In its Appeal, TCI refers to two different time periods when explaining the 2.15% adjustment: September 30, 1992 to June 30, 1994, and June 30, 1993 to June 30, 1994. Appeal at 5. The correct time period is September 30, 1993 to June 30, 1994, as indicated in TCI's workpapers. *See* Opposition Exh. 6, FCC Form 1210—March 1995 Preparation Document, Line E%. See also 47 C.F.R. § 76.922(d)(2); Ninth Order on Reconsideration, 10 FCC Rcd at 5203.

[51] The 1995 Form 1210 covered the period October 1, 1994 to March 31, 1995.

[52] Reply at 4. See also Opposition Exh. 6 (1995 Form 1210).

[53] Reply at 4. See also Opposition Exh. 1 (1996 Form 1210).

[54] Opposition at 10.

identified the period of the inflation adjustment as September 30, 1993 to June 30, 1994,[55] which is the same period covered by the 1996 Form 1210.

28. In reply, TCI argues that the City ignores the fact that the City had rejected TCI's previous attempts to recover the 2.15% inflation adjustment.[56] TCI states that its 1995 Form 1210 rate filing was denied and never implemented.[57] The 1996 Form 1210 begins with a $9.43 MPR, which was the last City approved rate, rather than TCI's previously proposed $9.93.[58] TCI started the 1996 Form 1210 with the lower rate, because the City rejected the 1995 Form 1210 filing in its entirety.[59] TCI started the 1996 Form 1210 with the lower rate and then made a second attempt at securing the previously rejected inflation adjustment.[60]

29. Operators may adjust their rates annually to reflect inflation. On both the Form 1210 and the Form 1240, an inflation adjustment may be made to the non-external cost portion of rates.[61] Operators calculating true-up period inflation use a quarterly figure published by the U.S. Department of Commerce for each month of the true-up period to calculate an average inflation factor for the entire true-up period.[62]

30. The record includes the 1995 and the 1996 Form 1210s, as well as the Form 1240. TCI included the 2.15% inflation adjustment in its 1995 Form 1210,[63] but it did not implement the increased rate that resulted from that adjustment because the City rejected TCI's rate increase in an order that TCI appealed.[64] Subsequently, TCI did include the 2.15% inflation factor as an adjustment on its 1996 Form 1210, which was filed concurrently with its Form 1240. Cable operators can accrue inflation and implement it later.[65] Although TCI did claim inflation on the 1995 Form 1210, it never actually received inflation because that form and the proposed rate increase were rejected by the City. TCI is entitled to the inflation adjustment claimed on the 1996 Form 1210. We grant the appeal with respect to the inflation adjustment for the period covered by the 1996 Form 1210.

B. Form 1240

31. TCI also sought an inflation adjustment of 2.96% in its first Form 1240, which covered the period July 1, 1994 to June 30, 1995. With respect to the 2.96% inflation adjustment, TCI states that

[55] *Id.*

[56] TCI Reply at 3.

[57] *Id.* at 4.

[58] *Id*.

[59] *Id.*

[60] *Id.*

[61] 47 C.F.R. §§ 76.922(d)(2), 76.922(e)(2)(i).

[62] FCC Form 1240 Instructions, Appendix A, FCC Form 1240 Worksheets, Worksheet 1 at 24-25.

[63] *See* Opposition Exh. 6, Module D, Line D5 (showing inflation factor of 1.0521 (5.21%). The inflation factor on Line D5 includes the 2.15% applicable to the period from September 30, 1993 to June 30, 1994. The Commission authorized certain operators to make a 5.21% inflation adjustment for the period from September 30, 1992 to June 30, 1994, of which 3% was deemed to apply to the period from September 30, 1992 to September 30, 1993, and 2.15% was deemed to apply to the period from September 30, 1993 to June 30, 1994. *Ninth Order on Reconsideration*, 10 FCC Rcd at 5203.

[64] Reply at 4. TCI's appeal was granted in part and denied in part. See In the Matter of TCI of Pennsylvania, Inc., 18 FCC Rcd 7058 (2003).

[65] 47 C.F.R. § 76.922(e)(3). *See also, Thirteen Order on Reconsideration*, 11 FCC Rcd 388, 392 (1995).

it never previously claimed that inflation adjustment on any prior Form 1210 filing, and first claimed it on the Form 1240 at issue in this appeal.[66]

32. In opposition, the City argues that although TCI stated in its Form 1240 explanation that it had not previously claimed inflation for the period July 1994 to June 1995, the City's review of the 1996 Form 1210 filed with the Form 1240 indicated an increase based upon an inflation adjustment for the period July 1994 to June 1995. The City stated that the 1996 Form 1210 showed an increase based on an annual inflation adjustment to cover the period July 1994 to June 1995.[67] The City therefore concluded that TCI was attempting to claim inflation twice.

33. In reply, TCI argues that it completed Form 1240 consistent with the Commission's instructions by adjusting for previously "unclaimed" inflation and has never claimed inflation for the period July 1994 to June 1995 on any prior Form 1210.[68]

34. It appears that TCI did not include in its Form 1240 an inflation adjustment that was already reflected in its rates. A review of the 1996 Form 1210 and 1240 filings in sequence demonstrates that TCI had not previously adjusted its rates to recover inflation for the July 1994 to June 1995 period. TCI's inflation adjustment in its Form 1240 was calculated properly, and the City erred in rejecting it.[69] We grant the appeal with respect to the inflation adjustment for the period covered by the Form 1240.

D. Equipment Rates

35. The remaining issue raised by TCI involves the preparation of FCC Form 1205, which is used by operators to calculate permitted rates for equipment and installation.[70] Schedule C of Form 1205 is used to compute annually the cost-based permitted charges for leased customer premises equipment offered in connection with regulated service. The current provision for depreciation (Line J) is one of the factors used to compute the costs. The City rejected TCI's five-year depreciation schedule for converters and recalculated TCI's converter rates using a ten-year depreciation schedule.[71] The City had concluded that the useful life of converters is ten years.[72] In support of its finding, the City cited our decision in *Media General Cable of Fredericksburg ("Media General")*,[73] where we rejected an operator's change from a 10-year depreciation schedule for converters to a 30-year depreciation schedule.

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[66] Reply at 5.

[67] Rate Order at 4.

[68] *Id.* at 5.

[69] The City is incorrect in claiming (Opposition at 11) that on Line C1 of its Form 1240 TCI inappropriately applied a 12-month inflation figure to the five-month true-up period. First, TCI prorated the 2.61% annual inflation factor applicable to the true-up period, resulting in an inflation factor applicable to the five months at issue. Opposition Exh. 1, Worksheet 1 – True-Up Period Inflation. The result, a factor of 1.0109 (1.09%), was then correctly multiplied by 1.0296 (2.96%), the inflation factor for the period from July 1, 1994 to June 30, 1995, which TCI had not previously claimed. Opposition Exh. 1, FCC Form 1240 Preparation Documentation 1996 Annual Filing, Line C1.

[70] Pursuant to the 1992 Cable Act, the Commission has established standards for setting equipment and installation rates that allow operators to recover the actual costs of the installation and lease of customer-premises equipment used by subscribers to receive the basic service tier. Communications Act § 623(b)(3), 47 U.S.C. § 543(b)(3); 47 C.F.R. § 76.923.

[71] Order at 4.

[72] *Id.*

[73] 10 FCC Rcd 9390 (1995).

36. On appeal, TCI argues that five years is the useful life used company-wide to depreciate converters, both before and after equipment rates became subject to regulation. TCI states that the five-year depreciation schedule is used in TCI's general ledger and audited financial statements.[74]

37. Form 1205 requires operators to use "financial data from the company's general ledger and subsidiary records maintained in accordance with generally accepted accounting principles" ("GAAP").[75] GAAP does not prescribe useful lives for specific assets but instead provides guidelines for determining useful life.[76] The City erred in relying on our ruling in *Media General* to reject TCI's converter rates. Our finding in *Media General* does not mean that a converter depreciation schedule of less than ten years is inappropriate. We merely concluded that ten years, at that time, reasonably approximated the industry-standard useful life of converters, and that 30 years did not. We did not consider the reasonableness of depreciation schedules shorter than ten years. Subsequent to *Media General*, we did consider a depreciation schedule of less than ten years, and held that the franchising authority erred when it rejected the operator's five-year depreciation schedule for converters in favor of a seven-year depreciation schedule.[77]

38. TCI has represented that the useful life of converters is five years and that it has used and continues to use a five-year depreciation schedule for accounting purposes. The City does not dispute TCI's general ledger entries and, other than its citation to *Media General*, has not offered support for its argument that the industry-standard useful life of converters exceeds five years. A local franchising authority should not reject the depreciation schedule reflected in an operator's general ledger unless the franchising authority can show that the operator's depreciation schedule is based on a useful life that is inconsistent with the industry standard for the equipment in question.[78] We conclude that the City's rejection of TCI's depreciation schedule for converters does not comport with Commission rules and therefore is unreasonable. The appeal is granted with respect to the deprecation period.

V. ORDERING CLAUSES

39. Accordingly, **IT IS ORDERED** that the Appeal of the Local Rate Order filed by TCI of Pennsylvania on June 27, 1996, **IS GRANTED IN PART AND DENIED IN PART** and the local rate order of the City of Pittsburgh, Pennsylvania **IS REMANDED** for further consideration consistent with this Memorandum Opinion and Order.

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[74] Appeal at 6-7.

[75] Form 1205 Instructions at 3, "General Instructions."

[76] *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service*, MM Docket No. 93-215 and CS Docket No. 94-28, Second Report and Order,, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 2220, 2259 (1996).

[77] *See Tele-Media Company of Western Connecticut*, 11 FCC Rcd 3161, 3163-64 (1996) (rejecting the local franchising authority's alternative depreciation schedule because it did not consider industry practices before developing its depreciation schedule), *petition for reconsideration dismissed*, 13 FCC Rcd 17,756 (1998).

[78] *Id*.

40. **IT IS FURTHER ORDERED** that TCI of Pennsylvania's stay request **IS DISMISSED**.

41. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules.[79]

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton
Deputy Chief, Policy Division
Media Bureau

[79] 47 C.F.R. § 0.283.